

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

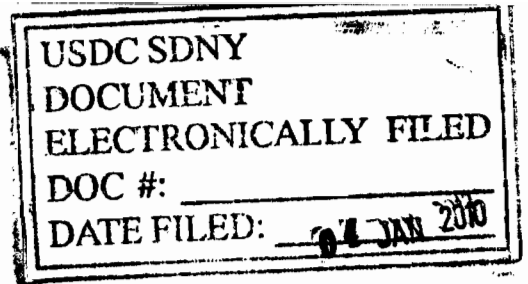
GUIDEPOSTS,

Plaintiff,

-v-

BF1 FILMS LLC d/b/a FAMILY 1 FILMS and
JEFFREY YORDY,

Defendant.



ORDER

09 cv 5994(GBD)(MHD)

GEORGE B. DANIELS, District Judge:

Plaintiff Guideposts commenced this action against Defendants BF1 Films and Jeffrey Yordy, asserting claims for breach of contract by BF1 and, with respect to Yordy, a claim for piercing the corporate veil to impose personal liability on him for corporate debts. Plaintiffs properly served each defendant with a summons and a copy of the complaint. Both defendants failed to respond, and default was entered against them. This Court then referred the case to Magistrate Judge Michael H. Dolinger for a Report and Recommendation ("Report") on the issue of damages.

Plaintiff proffered an affidavit of the Chief Financial Officer of Guidepost. He attached two contracts entered into by the Plaintiff with BF1 Films. One contract provided for a loan of \$810,000.00 to be extended by Plaintiff to BF1 with repayment of this sum and an additional \$41,000.00 within 270 days. According to the affidavit, the money was sent to BF1 Films by wire transfer on October 14, 2008, with repayment due July 11, 2009. Since BF1 never paid the Plaintiff the required \$851,000.00, Guidepost seeks recovery.

The second contract at issue provided for co-marketing by Plaintiff and BF1 (doing business as Family 1 Films) of two books to be produced by BF1. According to Plaintiff, it advanced BF1 \$175,000.00 under the terms of the agreement. BF1 was to deliver the books to Plaintiff by February 28, 2009. It never did so. Under the terms of the contract Plaintiff was

entitled to a return of its advance. Despite cancellation of the contract on May 19, 2009 and Plaintiff's request for a refund, BF1 never complied.

In addition to the principal amounts, Plaintiff also seeks an award of pre-judgment interest and costs. Based on the nine-percent interest rate embodied in C.P.L.R. §§ 5001-02, Plaintiff asserts that it is entitled to \$27,589.60 in interest through October 19, 2009 and an additional \$260.06 per day thereafter. It also seeks an award of costs in the amount of \$1082.20 encompassing the \$350.00 court filing fee and \$732.20 representing the fee paid for service on the Defendants.

Magistrate Judge Dolinger issued a Report and Recommendation recommending that the Plaintiff's application for damages be granted. Specifically, the Magistrate Judge recommended that judgment should be entered in favor of Plaintiff and against Defendants in the amount of \$851,000.00 owed on the loan agreement, \$175,000.00 on the marketing agreement, \$27,589.60 in interest through October 19, 2009, \$13,003.00 in interest through December 8, 2009 and \$1,082.20 in costs, for a total of \$1,067,674.80.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a de novo hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619,

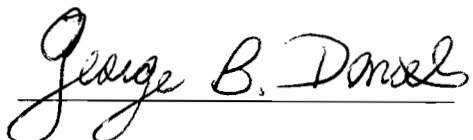
620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if “there is no clear error on the face of the record.” Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

In his report, Magistrate Judge Dolinger advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Defendants, though given the opportunity to respond to Plaintiff’s submission on damages, did not oppose the application. Rather, Defendant Jeffrey Yordy submitted a letter to Judge Dolinger stating that Defendants do not dispute the amounts sought, but are seeking to arrange for funding to pay the debt.

After carefully reviewing the Report and Recommendation, the Court finds that the report is not facially erroneous, and adopts the Recommendation in its entirety. Plaintiff is awarded \$1,026,000 in damages, \$27,589.60 in interest through October 19, 2009, \$13,003.00 in interest through December 8, 2009 and \$1,082.20 in legal fees.

Dated: New York, New York
January 4, 2010

SO ORDERED:

A handwritten signature in cursive script, reading "George B. Daniels", written over a horizontal line.

GEORGE B. DANIELS
United States District Judge